

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

LLOYD NEIL POPE and )  
GLENN H. GORTON, )  
                        )  
Plaintiffs,           )  
                        )  
vs.                   ) Case No. CIV-07-0284-F  
                        )  
DAVID MILLER, Warden, et al., )  
                        )  
Defendants.           )

**ORDER**

Plaintiffs, Lloyd Neil Pope and Glenn H. Gorton, state prisoners appearing *pro se* and *in forma pauperis*, whose pleadings are liberally construed, bring this action pursuant to 42 U.S.C. § 1983.

Magistrate Judge Valerie K. Couch's Report and Recommendation of July 31, 2007 is before the court. (Doc. no. 43, "the Report.") In her Report, the magistrate judge makes a number of recommendations. Each of the plaintiffs has filed objections to the Report. (Doc. nos. 46, 47.) As required by 28 U.S.C. § 636(b)(1), the court has reviewed all objected to matters *de novo*.

Having concluded that review, and after careful consideration of plaintiffs' objections, the record, and the relevant authorities, the court finds that it agrees with the Report of the magistrate judge. It further finds that no purpose would be served by stating any further analysis here.

Accordingly, the Report and Recommendation of Magistrate Judge Couch is **ACCEPTED, ADOPTED, and AFFIRMED** in its entirety, and the court enters the following more specific orders.

Plaintiff Pope is dropped as a party from this lawsuit pursuant to Rule 21 of the Federal Rules of Civil Procedure, without prejudice to refiling his claims in a separate action brought pursuant to 42 U.S.C. § 1983.

Count I of the Complaint is dismissed for failure to state a claim upon which relief may be granted.

Plaintiff Gorton is granted leave to file a second amended complaint to re-assert appropriate claims from the first amended complaint and to add any additional claims, if appropriate, as alluded to in pending motions before the court. Plaintiff Gorton is required to file an amended complaint within 20 days of the date of this order.

The pending motions at document nos. 23, 29-39 and 41-42 are denied.

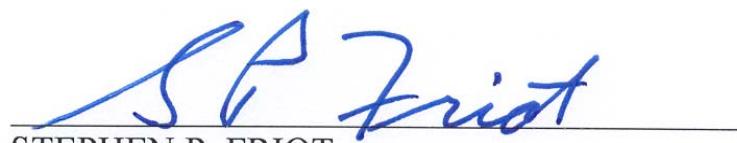
The Court Clerk is directed to refund to plaintiff Pope's prison trust account, the filing fees paid by Mr. Pope which, to date, total \$158.09.

Plaintiff Gorton is required to pay the full filing fee in the amount of \$350.00. Mr. Gorton has paid \$69.37 of that fee to date.

To the extent that this matter relates to plaintiff Pope, this matter is referred back to the magistrate judge for the limited purpose of vacating and/or modifying the Orders to Agency (doc. nos. 15-16) to reflect the change in allocation of the filing fee.

To the extent this matter relates to the claims asserted by plaintiff Gorton, this matter continues as a matter referred to the magistrate judge for further initial proceedings.

Dated this 21<sup>st</sup> day of August, 2007.



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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE